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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,008	06/11/2004	David Lawrence Von Kleeck	001345	4007
29569	7590	01/17/2008		
FURR LAW FIRM 2622 DEBOLT ROAD UTICA, OH 43080			EXAMINER BUSS, BENJAMIN J	
			ART UNIT 2129	PAPER NUMBER
			MAIL DATE 01/17/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/710,008

Applicant(s)

VON KLEECK, DAVID  
LAWRENCE

Examiner

Benjamin Buss

Art Unit

2129

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133) Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 42-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 42-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/11/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

This Office Action is in response to an AMENDMENT entered 11/26/2007 for the patent application 10/710,008 filed on 6/11/2004, which claims priority to 60/320,261 filed on 6/11/2003. The Office Actions of 7/25/2007, 12/4/2006, and 6/14/2006 are fully incorporated into this Office Action by reference. Claims 42-53 are pending.

**Information Disclosure Statement**

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." There are at least eight references in the specification that are **not** in the IDS filed on 6/11/2004. Unless these references have been cited by the examiner on form PTO-892, they have not been considered.

**Claim Rejections - 35 USC § 103****Response to Arguments**

Applicant's arguments filed 11/26/2007 have been fully considered but they are not persuasive. Applicant has argued that since the Examiner withdrew the rejections pertaining to claims 21-32 in the previous Office Action, those claims are now allowable and have now been reinstated as new claims 42-53.

Examiner disagrees. The rejection of claims 21-32 was withdrawn because those claims were canceled and rewritten as new claims 33-41. The cancellation of claims 21-32 effectively caused the corresponding limitations to cease to exist. Claims 21-32 would have remained rejected under the prior art, as previously applied, if the claims were not canceled. Canceling the claims and subsequently reinstating them in no way mitigates the application of the prior art. Therefore, the reinstated claims are properly rejected in that manner.

Regarding the instant application, Examiner asserts there has been **no** indication in any Office Action that any claims, limitations, and/or subject matter are allowable over the prior art.

At this time, the rejection of claims 33-41 under 35 U.S.C. §103 is withdrawn **because** these claims have been **canceled**. Likewise, no rejections remain on claims 1-41 as a **result** of the cancellation of these claims. This is clearly **not** an indication that any of these claims, limitations, and/or subject matter are allowable over the prior art.

New claims 42-53 have been rejected as detailed below.

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**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this

Office action:

5 (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10 Claims 42-44 and 50-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Neuneier** (USPN 6,317,730) and **Zizzamia** (USPAP 2004/0054553) in view of **Tewari** (USPN 6,004,267).

**Claims 42:**

**Neuneier** teaches:

- 15 - inputting data (C1-8 especially "input data" C5:35-50);
- having a Model identification step review said data and output results (C1-8 especially "output value" C4:30-60 and "modeling" C1:1-20 and "membership functions" C4:60-C5:10 and "mapping" C5:25-35 and "actual output value of the neural network" C5:55-67);
- having a Model parameter estimation step review said output results (C1-8 especially "training" C5:35-60 and
- 20 "parameter" C5:35-60 and "new rule" C2:40-60); and
- outputting final results (C1-8 especially "new fuzzy rule set NFR is thereby characterized by the new neural network NNN" C8:1-30)
- where said model identification step comprises identifying by decision nodes (C1-8 especially "neuron" C4:30-55) and
- 25 - uses artificial neural networks to review said data (C1-8 especially "neural network" throughout),
- where said model parameter estimation step uses machine learning to review said output results (C1-8 especially "training" C5:35-60 and "learning" C7:45-60).

**Neuneier** fails to teach:

- the system being for hiring an employee;
- 30 - where said results have two states.

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**Zizzamia teaches:**

- the system being for hiring an employee (p1-11 especially "recruiting, hiring and appointing new insurance agents" ¶8 and "company would appoint an agent based on the agent's ability to produce future profits and increase productivity" ¶14 and "identifying productive and profitable agents" ¶18).

5 Motivation:

**Neuneier** and **Zizzamia** are from the same field of endeavor, data processing. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of **Neuneier** by using the system for hiring an employee as taught by **Zizzamia** for the benefit of employing data sources to develop a global producer database and model predictive of the future profitability and productivity of licensed professionals such as insurance agents to increase future profits and productivity (**Zizzamia** ¶¶14, 18, & 21).

The combination of **Neuneier** and **Zizzamia** fails to teach:

- where said results have two states.

**Tewari** teaches:

- Where said results have two states (C1-21 especially "binary probability predictions" C12:60-C13:5).

15 Motivation:

**Tewari** and the combination of **Neuneier** and **Zizzamia** are from the same field of endeavor, data processing. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combined teachings of **Neuneier** and **Zizzamia** by having two states for the results as taught by **Tewari** for the benefit of representing known status (positive or negative for the feature) (**Tewari** C12:60-C13:5).

20

**Claims 50:****Neuneier** teaches:

- inputting data (C1-8 especially "input data" C5:35-50);
- having a Model identification step review said data and output results (C1-8 especially "output value" C4:30-60 and "modeling" C1:1-20 and "membership functions" C4:60-C5:10 and "mapping" C5:25-35 and "actual output value of the neural network" C5:55-67);
- having a Model parameter estimation step review said output results (C1-8 especially "training" C5:35-60 and "parameter" C5:35-60 and "new rule" C2:40-60); and

25

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- outputting final results (C1-8 especially "new fuzzy rule set NFR is thereby characterized by the new neural network NNN" C8:1-30)
- where said model identification step comprises identifying by decision nodes (C1-8 especially "neuron" C4:30-55) and
- 5 - uses fuzzy inference systems to review said data (C1-8 especially "fuzzy rule set" C4:30-55),
- where said model parameter estimation step uses machine learning to review said output results (C1-8 especially "training" C5:35-60 and "learning" C7:45-60).

**Neuneier** fails to teach:

- the system being for hiring an employee;
- 10 - where said results have two states.

**Zizzamia** teaches:

- the system being for hiring an employee (p1-11 especially "recruiting, hiring and appointing new insurance agents" ¶8 and "company would appoint an agent based on the agent's ability to produce future profits and increase productivity" ¶14 and "identifying productive and profitable agents" ¶18).

15 Motivation:

**Neuneier** and **Zizzamia** are from the same field of endeavor, data processing. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of **Neuneier** by using the system for hiring an employee as taught by **Zizzamia** for the benefit of employing data sources to develop a global producer database and model predictive of the future profitability and productivity of licensed

20 professionals such as insurance agents to increase future profits and productivity (**Zizzamia** ¶¶14, 18, & 21).

The combination of **Neuneier** and **Zizzamia** fails to teach:

- where said results have two states.

**Tewari** teaches:

- Where said results have two states (C1-21 especially "binary probability predictions" C12:60-C13:5).

25 Motivation:

**Tewari** and the combination of **Neuneier** and **Zizzamia** are from the same field of endeavor, data processing. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combined

5        -        Where said states are hire and do not hire (*These claims are directed toward non-functional descriptive material which does not further limit the claims. Assigning labels or names to the states does not change the functionality of the invention*).

- Where said data is biographical data (p1-11 especially "historical producer data" ¶19; *This claim is directed toward non-functional descriptive material which does not further limit the claims. Assigning labels or names to the data does not change the functionality of the invention*).

Claims 45 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Neuneier** (USPN 6,317,730), **Zizzamia** (USPAP 2004/0054553), and **Tewari** (USPN 6,004,267) in view of **Mascarenhas** (USPAP 2002/0029162).

- Where said data is personality data (p1-13 especially "Personality Trait Topography" ¶¶63 and "psychological, behavioral, personality, or other attributes" ¶¶51; *This claim is directed toward non-functional descriptive material which does not further limit the claims. Assigning labels or names to the data does not change the functionality of the invention*).

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Motivation:

**Mascarenhas** and the combination of **Neuneier**, **Zizzamia**, and **Tewari** are from the same field of endeavor, data processing. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combined teachings of **Neuneier**, **Zizzamia**, and **Tewari** by using personality data as taught by **Mascarenhas** for the benefit of matching users with target information such as career openings (Mascarenhas ¶7).

Claim Rejections - 35 USC § 103

Claims 46-47 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Neuneier** (USPN 6,317,730) in view of **Mascarenhas** (USPAP 2002/0029162).

**Claim 46:****Neuneier** teaches:

- inputting data (C1-8 especially "input data" C5:35-50);
- having a Model identification step review said data and output results (C1-8 especially "output value" C4:30-60 and "modeling" C1:1-20 and "membership functions" C4:60-C5:10 and "mapping" C5:25-35 and "actual output value of the neural network" C5:55-67);
- having a Model parameter estimation step review said output results (C1-8 especially "training" C5:35-60 and "parameter" C5:35-60 and "new rule" C2:40-60); and
- outputting final results (C1-8 especially "new fuzzy rule set NFR is thereby characterized by the new neural network NNN" C8:1-30)
- where said model identification step comprises identifying by decision nodes (C1-8 especially "neuron" C4:30-55) and
- uses artificial neural networks to review said data (C1-8 especially "neural network" throughout),
- where said model parameter estimation step uses machine learning to review said output results (C1-8 especially "training" C5:35-60 and "learning" C7:45-60).

**Neuneier** fails to teach:

- the system being for hiring an employee;



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- where said results have two states.

**Zizzamia** teaches:

- the system being for hiring an employee (p1-11 especially "recruiting, hiring and appointing new insurance agents" ¶8 and "company would appoint an agent based on the agent's ability to produce future profits and increase productivity" ¶14 and "identifying productive and profitable agents" ¶18).

Motivation:

**Neuneier** and **Zizzamia** are from the same field of endeavor, data processing. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of **Neuneier** by using the system for hiring an employee as taught by **Zizzamia** for the benefit of employing data sources to develop a global producer database and model predictive of the future profitability and productivity of licensed professionals such as insurance agents to increase future profits and productivity (**Zizzamia** ¶¶14, 18, & 21).

The combination of **Neuneier** and **Zizzamia** fails to teach:

- where said results have three states.

**Mascarenhas** teaches:

- where said results have three states (p1-13 especially "three states" ¶24).

Motivation:

**Neuneier** and **Mascarenhas** are from the same field of endeavor, data processing. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of **Neuneier** by having three states for the results as taught by **Mascarenhas** for the benefit of accounting for uncertainty in the observation technology (**Mascarenhas** ¶24).

**Claim 47:****Mascarenhas** teaches:

- Where said states are no not move forward, move forward with caution and move forward (p1-13 especially "selectively upregulated, selectively downregulated, or unchanged" ¶24; *This claim is directed toward non-functional descriptive material which does not further limit the claims. Assigning labels or names to the states does not change the functionality of the invention*).

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**Claim 49:**

**Mascarenhas** teaches:

- Where said data is personality data (p1-13 especially "Personality Trait Topography" ¶¶63 and "psychological, behavioral, personality, or other attributes" ¶¶51; *This claim is directed toward non-functional descriptive material which does not further limit the claims. Assigning labels or names to the data does not change the functionality of the invention*).

**Claim Rejections - 35 USC § 103**

Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Neuneier** (USPN 6,317,730) and

**Mascarenhas** (USPAP 2002/0029162) in further view of **Zizzamia** (USPAP 2004/0054553).

**Claim 48:**

The combination of **Neuneier** and **Mascarenhas** fails to teach:

- Where said data is biographical data.

**Zizzamia** teaches:

- Where said data is biographical data (p1-11 especially "historical producer data" ¶¶19; *This claim is directed toward non-functional descriptive material which does not further limit the claims. Assigning labels or names to the data does not change the functionality of the invention*).

**Motivation:**

**Zizzamia** and the combination of **Neuneier** and **Mascarenhas** are from the same field of endeavor, data processing. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combined teachings of **Neuneier** and **Mascarenhas** by using biographical data as taught by **Zizzamia** for the benefit of employing data sources to develop a global producer database and model predictive of the future profitability and productivity of licensed professionals such as insurance agents to increase future profits and productivity (**Zizzamia** ¶¶14, 18, & 21).

**Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

5           A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory  
10       period for reply expire later than SIX MONTHS from the date of this final action.

Claims 42-53 are rejected.

**Correspondence Information**

15           Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin Buss whose telephone number is 571-272-5831. The examiner can normally be reached on M-F 9AM-5PM.

          As detailed in MPEP 502.03, communications via Internet e-mail are at the discretion of the applicant. Without a written authorization by applicant in place, the USPTO will not respond via Internet e-mail to any Internet correspondence which contains information subject to the confidentiality requirement as set forth in 35 U.S.C. 122. A  
20       paper copy of such correspondence will be placed in the appropriate patent application. The following is a sample authorization form which may be used by applicant:

"Recognizing that Internet communications are not secure, I hereby  
authorize the USPTO to communicate with me concerning any subject  
matter of this application by electronic mail. I understand that a copy of  
25       these communications will be made of record in the application file."

          If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Vincent can be reached on 571-272-3080. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the

- 5 Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Benjamin Buss  
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